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**IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA  
FIFTH APPELLATE DISTRICT**

JAMES MATTHEW WILSON,

Plaintiff and Appellant,

v.

SELECT PORTFOLIO SERVICING, INC. et al.,

Defendants and Respondents.

F066272

(Super. Ct. No. VCU246096)

**OPINION**

**THE COURT\***

APPEAL from an order of the Superior Court of Tulare County. Melinda M. Reed, Judge.

James Matthew Wilson, in pro. per., for Plaintiff and Appellant.

No appearance for Defendants and Respondents.

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\* Before Levy, Acting P.J., Poochigian, J. and Kane, J.

## **STATEMENT OF THE CASE AND FACTS**

Appellant, James Wilson, filed a first amended complaint in the Tulare County Superior Court naming as defendants Select Portfolio Servicing, Inc., et al. The complaint sought to set aside a trustee sale, cancel the trustee's deed, quiet title and alleged breach of written agreement, breach of implied covenant of good faith and fair dealing and intentional misrepresentation. Defendants filed a demurrer to the complaint. On August 6, 2012, the superior court sustained the demurrer without leave to amend. Following the denial of a motion for reconsideration, on November 15, 2012, appellant filed a notice of appeal from the order sustaining the demurrer without leave to amend. According to the Tulare County Superior Court docket, no final judgment has been entered.

This court issued a briefing order granting appellant time to explain why this court should not dismiss his appeal for lack of a judgment or an appealable order. Appellant submitted a letter brief asking this court to treat the order as appealable since all that is left to make the order appealable is the formality of the entry of a dismissal order or judgment. We decline to do so.

## **DISCUSSION**

An order sustaining a demurrer, whether with or without leave to amend, is not appealable; appeal is proper only after entry of a dismissal on such an order. (*Sisemore v. Master Financial, Inc.* (2007) 151 Cal.App.4th 1386, 1396.)

The appeal in the above entitled action is dismissed on the ground appellant attempts to appeal from an order sustaining a demurrer without leave to amend. Such an order is not appealable and this court declines to deem the order to incorporate a judgment of dismissal. Appeal is proper only after entry of a judgment of dismissal. (*Sisemore v. Master Financial, Inc.*, *supra*, 151 Cal.App.4th at p. 1396.)

### **DISPOSITION**

The appeal from the order sustaining the demurrer is dismissed. Appellant's remedy is to secure a final judgment and to file a timely notice of appeal from the judgment.

In the event appellant files a timely notice of appeal from the judgment in Tulare County Superior Court case No. VCU246096, this court will waive the filing fee. Additionally, appellant may request in the subsequently filed appeal that this court take judicial notice of the record on appeal filed in the instant action.